STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6120

Tariff filing of Central Vermont Public Service)
Corporation requesting a 12.9% rate increase, to)
take effect July 27, 1998)

Docket No. 6460

Tariff filing of Central Vermont Public Service)
Corporation requesting a 7.6% rate increase,)
to take effect December 24, 2000)

Prefiled Surrebuttal Testimony of

William Sherman

on behalf of the

Vermont Department of Public Service

April 20, 2001

Summary: Mr. Sherman's surrebuttal testimony revises the adjustments of his direct testimony in response to the rebuttal testimony of CVPS Witnesses Howland and Watts and the pre-filed testimony of Vermont Yankee Witness Wiggett. Mr. Sherman also revises an adjustment described in DPS Witnesses Schultz and DeRonne regarding Millstone 3 decommissioning costs based on information revealed in discovery. Mr. Sherman responds to the comments of CVPS Witness Brown regarding CVPS's role in a management decision regarding whether to implement power uprate at Vermont Yankee.

Surrebuttal Testimony
of
William Sherman

Q. Please state your name and occupation.

A. My name is William Sherman, and I am an engineer with the Department of Public Service ("The Department"). My responsibilities include oversight for the state of the activities of the Vermont Yankee Nuclear Power Station and the nuclear power industry in general.

Q. Are you the same William Sherman who offered pre-filed direct testimony on behalf of the Department on March 9, 2001.

A. Yes, I am.

INTRODUCTION AND SUMMARY OF REBUTTAL TESTIMONY

Q. What is the purpose of your rebuttal testimony?

A. I revise the adjustments of my direct testimony in response to the rebuttal testimony of CVPS Witnesses Howland and Watts and the pre-filed testimony of Vermont Yankee Witness Wiggett of April 12, 2001, supporting the Update of Vermont Yankee's Operating Expense Projection ("the VY Update"). Specifically, I revise the value of the power uprate decision, the estimate of CVPS's share of Vermont Yankee decommissioning costs, and the estimate of CVPS's share of Vermont Yankee Texas Compact interest. I also revise an adjustment described in DPS Witnesses Schultz and DeRonne regarding Millstone 3 decommissioning costs based on information revealed in discovery. Finally, I respond to the comments of CVPS Witness Brown regarding CVPS's role in a management decision regarding whether to implement power uprate at Vermont Yankee.

Q. Would you please summarize the results of the adjustments supported by this testimony?

A. Yes. This testimony identifies an amount of $2,728,000 by which CVPS's adjusted test year costs would have been reduced if Vermont Yankee had begun implementing power uprate in early 1999. In addition, adjustments supported by this testimony are:

Summary of Adjustments

	VY Total	CVPS Share
VY decommission adjustment	($5,690,000)	($1,772,000)
VY Texas Compact principal adjustment	($2,456,000)	($765,000)
VY Texas Compact interest adjustment	($646,000)	($201,000)
VY new sale transaction costs	($1,500,000)	($467,000)
Millstone 3 Decommissioning Adjustment	---	($354,756)
Total Adjustment (Reduction)		**($3,559,756)**

Q. Please identify the adjusted test year or rate year for this proceeding.

A. The adjusted test year or rate year for this docket is July 1, 2001 to June 30, 2002.

POWER UPRATE DECISION

Q. Please summarize your surrebuttal comments regarding power uprate.

A. As a result of discovery received subsequent to my direct testimony, it is clear that, preceding the decision of the Vermont Yankee Board of Directors ("VY Board") on January 15, 1999, CVPS acted in a manner inconsistent with meeting the needs of its ratepayers at the lowest present-value life-cycle cost, and inconsistent with the management decisions a reasonable

manager would have made. These actions are demonstrated through discovery documents included in chronological order for ease of review[1] and identified below:

Exhibit DPS-WKS-5	**(Confidential)** Power Uprate Proposal, November 19, 1998 (duplicate of Exhibit DPS-WKS-1)
Exhibit DPS-WKS-6	**(Confidential)** Meeting notes of the Nuclear Oversight Committee Meeting of January 5, 1999
Exhibit DPS-WKS-7	Proposed Resolution from the Nuclear Oversight Committee
Exhibit DPS-WKS-8	**(Confidential)** CVPS Witness Brown's notes from the January 5, 1999 Nuclear Oversight Committee Meeting
Exhibit DPS-WKS-9	**(Confidential)** Chart entitled "graph 1" re: Power Uprate
Exhibit DPS-WKS-10	**(Confidential)** Chart entitled "graph 2" re: Unrecovered Uprate Project Commitments
Exhibit DPS-WKS-11	**(Confidential)** VY Board Meeting Notes - January 13, 1999 (duplicate of Exhibit DPS-WKS-2)
Exhibit DPS-WKS-12	**(Confidential)** CVPS Witness Brown's notes from the January 13, 1999 VY Board Meeting
Exhibit DPS-WKS-13	CVPS Discovery Response 12-7 regarding management action following the VY Board Meeting of January 13, 1999
Exhibit DPS-WKS-14	DPS Internal Memorandum (Sherman to Sedano) - January 15, 1999
Exhibit DPS-WKS-15	**(Confidential)** VY Board Meeting Notes - January 15, 1999 (duplicate of Exhibit DPS-WKS-3)
Exhibit DPS-WKS-16	**(Confidential)** CVPS Witness Brown's notes from the January 15, 1999 VY Board Meeting
Exhibit DPS-WKS-17	RH Young memo to file of January 15, 1999 regarding the VY Board Meeting of January 15, 1999
Exhibit DPS-WKS-18	**(Confidential)** Letter from Robert Bradford/William Russell to Kent Brown of February 1, 1999
Exhibit DPS-WKS-19	Letter from RH Young to Robert Bradford/William Russell of March 3, 1999 (duplicate of Exhibit DPS-WKS-4)
Exhibit DPS-WKS-20	Sponsor Agreement of August 1, 1968

[1] In order to facilitate the review of this testimony, the four Exhibits from my prefiled direct testimony are duplicated so that material may be placed in a logical and chronological order.

Exhibit DPS-WKS-21	CVPS Discovery Response 15-30 regarding whether power uprate would require amendment to the power contract or capital funds agreement
Exhibit DPS-WKS-22	Three discovery responses regarding buyers' statements regarding power uprate

As demonstrated by these documents and elaborated in this testimony, the specific unreasonable management actions of CVPS were as follows:

- Not supporting or voting in favor of the power uprate proposal which was clearly beneficial to CVPS ratepayers' interests at the January 15, 1999 VY Board meeting; and
- Advocating as Lead Sponsor against power uprate at the January 15, 1999 VY Board meeting, which action, singularly and directly, resulted in the vote against implementing power uprate.

In the section below, "Response to CVPS Witnesses Howland and Watts," I identify that CVPS costs for the adjusted test year would be $2,728,000 less if the power uprate proposal had been implemented.

Q. Using the Exhibits you have provided, please describe the sequence of events related to CVPS's unreasonable management action.

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A. [redacted]

[redacted]

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Q. At this point, did you have a direct interaction regarding the power uprate subject.

A. Yes. Through my oversight role with Vermont Yankee, I was aware that the VY Board was considering the power uprate issue. On January 13, 1999, I gathered data from Vermont Yankee on the power uprate proposal and presented that data in a memorandum to the DPS Commissioner on the morning of January 15, 1999 (Exhibit DPS-WKS-14). At the briefing with the Commissioner, a decision was made that the Department considered the power uprate proposal to be clearly beneficial to Vermont ratepayers. I was directed to inform Mr. Young of CVPS that the Department was supportive of the power uprate proposal. I spoke with Mr. Young in the morning of January 15, 1999 before the VY Board Meeting, and conveyed that message.

Q. Was it normal for you to communicate with Mr. Young in that fashion?

A. No. The Commissioner directed me to call Mr. Young because his morning schedule did not permit him to make the call. In response to discovery, CVPS states that Mr. Young does not remember the call. I remember the call specifically because it was out of the ordinary for me to interact directly with Mr. Young and only occurred because of the short time before the VY Board Meeting, the importance of the message, and the Commissioner's unavailability.

Q. Please continue with the description of the sequence of events related to CVPS unreasonable management action.

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A. [redacted]

[2] [redacted]

[redacted]

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On March 3, 1999, Mr. Young responded to Messrs. Bradford and Russell's February 1, 1999 letter (Exhibit DPS-WKS-19). Mr. Young's letter serves as a candid view of CVPS's impression of the workings of the VY Board. It identifies that CVPS felt unanimity in decisions was a necessity. It makes clear that the lead Sponsor (i.e., CVPS) has the dominant role in guiding major decisions. It reveals that CVPS not only opposed power uprate at the January 15, 1999 VY Board meeting, but rather *emphatically* opposed the proposal. Mr. Young's letter makes it crystal clear that CVPS's strong opposition to the power uprate was determinative in the decision not to pursue power uprate.

Q. Could you address the question of whether the VY Board would have approved the power uprate proposal if CVPS had supported it?

A. The answer is, clearly, yes for several reasons.

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[redacted]

[3] [redacted]

[redacted]

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[redacted].

Thus, while Mr. Brown may be technically correct when he testified that CVPS "cannot and does not control decisions made by the Board of Directors of Vermont Yankee," that assertion does not refute the clear evidence that demonstrates that absent CVPS's actions opposing the power uprate proposal, the proposal would have been implemented.

Furthermore, contrary to the assertions in Mr. Brown's rebuttal testimony regarding the level of CVPS control on the VY Board, Mr. Young states that "each lead Sponsor[4] assume(s) the burden of guiding the major decisions with respect to its Yankee company." (Letter to Bradford/Russell - Exhibit DPS-WKS-19, at 2). Mr. Young goes on to speak of the preliminary vote in favor of power uprate at the January 13, 1999, and then states, "when the particular meeting in question reconvened two days later, the more emphatic position of the lead Sponsor . . . resulted in a different outcome." (Id., at 3). Therefore, Mr. Young specifically states it was CVPS role which "resulted in a different outcome," the rejection of the power uprate proposal.

More weight should be given to Mr. Young's statements in Exhibit DPS-WKS-19, than to Mr. Brown's testimony comments. Mr. Young's statement is a contemporaneous explanation of how the VY Board really works, without the expectation of outside review, while Mr. Brown is choosing arguments to defend a point.

Therefore, according to the substance of meeting notes, and according to CVPS own statements, it is clear that the VY Board would have approved power uprate if CVPS had supported it.

Q. Was a unanimous vote required in order to approve power uprate?

A. No. Mr. Brown, in his rebuttal testimony, states that "agreements among the "Sponsors" . . . require that certain actions, such as amendment of the Power Contracts, require unanimous

[4] Mr. Young identifies the "lead" Sponsor as the major utility in the jurisdiction of the power plant. Therefore, CVPS is the lead Sponsor for Vermont Yankee.

consent." (Brown at 2). The agreement to which he was referring was received in discovery and is provided as Exhibit DPS-WKS-20. This agreement states that unanimous consent is required for:

- amendment in any material respect of the power contracts or capital funds agreements;
- participation of Vermont Yankee, to a material extent, in any business other than the generation and sale of electric power; and
- construction by Vermont Yankee of an additional generating unit or units at the Vernon site or elsewhere.

None of these conditions for unanimity were met for the power uprate proposal. Mr. Brown confirms in discovery response 15-30 (Exhibit DPS-WKS-21) that the uprate proposal would not materially have changed the power contracts or capital funds agreements. Therefore, a unanimous vote was not required.

Q. Please comment on the VY Board's practice of requiring consensus to make decisions.

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A. [redacted]

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Mr. Young responded to Messrs. Bradford and Russell's comments by stating, "the practice of consensus decision-making necessarily became the norm for the Yankee companies. Any other approach would have involved imposing decisions upon an objecting minority and would have undermined the financial support on which the Yankee company concept was founded." (Exhibit DPS-WKS-19).

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Q. Let's proceed to investigate whether the reasons CVPS opposed power uprate in the January 15, 1999 VY Board Meeting would have led a reasonable utility manager, using the knowledge available at the time, to oppose the proposal. What are the reasons identified by CVPS Witness Brown in his rebuttal testimony?

A. Mr. Brown, in his March 30, 2001 prefiled rebuttal testimony, identifies six reasons why CVPS opposed the power uprate decision. They are:

- No need for incremental capacity (Brown at 5)
- Concern over recovery of costs in the event of early shutdown (Brown at 6)
- Concern that power uprate would be considered not prudent (Brown at 5)
- Recovery of costs in a sale was speculative (Brown at 7)
- Potential buyer would not pay for value of power uprate (Brown at 11)
- Restructured out-of-state sponsors were not interested in generation (Brown at 12)

I will show that each of these reasons stated by Mr. Brown is not one that would have led a reasonable utility manager to oppose the power uprate proposal.

Q. Would a reasonable utility manager have opposed the power uprate proposal because of the reason, *no need for incremental capacity*?

A. No. Mr. Brown gives as a reason for opposing the power uprate proposal, that CVPS had no significant need for incremental capacity or energy, and that it would have become obligated to purchase energy it did not need and would have had to sell the energy on the open market (Brown at 5). While these statements are true, a reasonable utility manager would have accumulated all the one-cent-per-kWh power that could have been obtained, and would have sold it forward on the market at a profit. The graphs provided as Exhibits DPS-WKS-9 and 10, which were available to CVPS, demonstrate the great profitability of the power uprate proposal. It was clear from restructuring efforts in the region in January 1999 that forward markets were developing.

Q. Does the reason, *concern over recovery of costs in the event of early shutdown*, have credibility as a reason why CVPS opposed the power uprate proposal?

A. No. Mr. Brown states that "further softening of the market could have led to a situation where Vermont Yankee's owners might have made the decision to decommission the Station early." (Brown at 6). However, Mr. Brown continues to state in his rebuttal testimony that CVPS believed Vermont Yankee would not close early and viewed the plant as a valuable hedge. Given these beliefs, a reasonable utility manager would have supported power uprate. CVPS had at its disposal the study recently issued by the Department, the 1999 *Vermont Yankee Economic Study*, which supported continued operation of the plant. CVPS had specifically been briefed on the Department's findings at the Nuclear Oversight Meeting of January 5, 1999 (Exhibit DPS-WKS-6).

Q. Would a reasonable utility manager have opposed the power uprate proposal because of *concern that power uprate would be considered not prudent*?

A. No. Mr. Brown states that CVPS considered "a significant risk of disallowance . . . on the ground that the power uprate decision was not prudent." (Brown at 5). This is an unreasonable assessment of the regulatory structure, which a reasonable utility manager would

not have made, to believe that a block of one-cent-per-kWh power would be considered imprudent. Mr. Brown also states that "the blended or average cost of the output would have been relatively high." (Id.). This again reflects an unreasonable assessment of the regulatory structure to believe that CVPS would not have been able to show the incremental low-cost power was beneficial. Finally, CVPS had at its disposal, the information from my phone call to Mr. Young in which I had expressed the Department's support for the proposal.

Q. Does the reason, *recovery of costs in a sale was speculative*, have credibility as a reason why CVPS opposed the power uprate proposal?

A. No. Mr. Brown states that "[t]he decision not to uprate in 1998 and early 1999, when recovery of the costs in a sale was speculative and the Company's plan was to mitigate power costs and divest generating assets, was reasonable and prudent in light of these circumstances and the best information available at the time." (Brown at 7-8). This statement lacks credibility because only months after the decision not to support the power uprate proposal, CVPS supported another proposal to expend $7 million on capital improvements whose recovery in a sale was similarly speculative.

This $7 million capital expense is an aspect of Docket No. 6480, Petition of Vermont Yankee Nuclear Power Corporation for a Certificate of Public Good to Construct a Bulk Gas Storage Facility. The gas storage facility is being proposed because of the addition of noble metals/hydrogen water chemistry for the reactor coolant system. CVPS supported, and therefore the VY Board accepted this $7 million project in mid-1999. In my technical judgement, the noble metals/hydrogen water chemistry project has longer term benefits, but is not necessary in the short term, i.e., if CVPS thought the plant would be shutdown prematurely, or if CVPS thought costs could not be recovered in a sale. CVPS's willingness to support the noble metals/hydrogen water chemistry project shows that the reason, *recovery of costs in a sale was speculative*, lacks credibility.

Furthermore, a reasonable utility manager would have realized that what was speculative was the regulatory success of such a marginal sale transaction, and that pursuing power uprate was an appropriate hedge against the sale not being approved.

Q. Would a reasonable utility manager have opposed the power uprate proposal because *a potential buyer would not pay for value of power uprate*?

A. No. Mr. Brown states that "AmerGen had made clear that it was not interested in a power uprate . . . and would not pay the cost of such an uprate in the purchase price." (Brown at 11). He also states that Entergy would not provide extra value for an uprate (Brown at 12). The Department asked for documentation of the buyers' negotiating position and none exists (see Exhibit DPS-WKS-22). In my opinion, the fact this position was never committed to paper indicates the softness in the position. A reasonable utility manager would have considered this a negotiating ploy of AmerGen and Entergy.

In fact, in my opinion AmerGen and Entergy would have paid for the value of the uprate if CVPS had supported the project. In my supplemental testimony in Docket No. 6300, prefiled on December 20, 2000, I make the concluding statement (at 25):

> DPS Witness Eldridge shows that price-to-value ratio paid by AmerGen in the adjusted financial transaction is 1.1. This is the same ratio as the one calculated for the $1.3 billion Millstone sale. This means that AmerGen is paying $1.10 for one dollar's value of the plant. Since *AmerGen is paying an amount greater or equal to the calculated value of the plant*, I consider this purchase price to be sufficient to justify approval of the sale (Emphasis added).

If AmerGen had not offered an amount greater than or equal to the calculated value of the plant, the Department would most likely not have supported the sale. However, if Vermont Yankee had pursued power uprate, the value of the plant would have been greater, and therefore AmerGen or Entergy would have had to provide a greater amount to achieve the Department's support. I realize that the Department's approval is not required for the sale to be approved, but it is important. I believe AmerGen or Entergy would have met the higher value commanded by power uprate, if CVPS had supported the project at the January 15, 1999 VY Board Meeting. Mr. Brown's statement, "in the Department's own negotiations with AmerGen it was also unable

to obtain recovery for the cost of an uprate from AmerGen, or it did not raise the matter with AmerGen (Brown at 11)," is wrongly focused. Using the negotiating strategy employed by the Department, if CVPS had supported power uprate and increased the value of the plant by pursuing the project, the Department would have received like value from the buyer (or would not have supported the sale). Additionally, the buyer would have had an additional $10 million available for purchase price since it would not have to use those resources for power uprate itself.

In addition, a reasonable utility manager would have realized that supporting and accepting the power uprate proposal would have strengthened the negotiating position for the Station by portraying an ownership fully prepared to go ahead on its own if the sale fell through.

Finally, this CVPS reason falters with the same arguments as the previous reason. Namely, if the concern was that a potential buyer would not have paid for the project, then CVPS also would not have supported the $7 million noble metals/hydrogen water chemistry project which the buyer also did not pay for. And a reasonable utility manager would have realized the speculative nature of the AmerGen sale proposal, and would not have ignored the downside risk that the sale would not be approved. A reasonable manager would have seen that supporting the power uprate project was an appropriate hedge in the event the sale transaction was not approved.

Q. Would a reasonable utility manager have opposed the power uprate proposal because *restructured out-of-state sponsors were not interested in generation*?

A. `On its face, no, because Vermont's interests are different than restructured out-of-state interests, and a reasonable utility manager would have worked according to the interests of that utility's constituents. Mr. Brown states that non-Vermont Sponsors "had little interest in pursuing a power uprate at a time when their main objective and mandate was to have no generation capacity, not more." (Brown at 12). He goes on to say that his "notes clearly show

that the out-of state Sponsors disfavored the uprate at the time." (Brown at 13). This latter statement is not accurate.

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If CVPS had acted as a reasonable utility manager and supported power uprate, the proposal would have had sufficient votes to be adopted. The employment by CVPS of this reason, *restructured out-of-state sponsors were not interested in generation*, is a specific demonstration of CVPS acting in a manner inconsistent with meeting the needs of its own ratepayers at the lowest present-value life-cycle cost.

Q. Having identified CVPS's role in the rejection of the power uprate proposal as inconsistent with meeting the needs of its ratepayers at the lowest present-value life-cycle cost, and inconsistent with the management decisions a reasonable manager would have made, how would you characterize the power uprate proposal?

A. In challenging CVPS's role with regard to the power uprate proposal, I am challenging their decision not to contract for approximately 8 MW of capacity at under 1 cent per kWh. I do not challenge any rate or other term or condition of service set by, or which would be set by, the FERC's formula rate for Vermont Yankee, nor do I challenge any aspect of the operation of the nuclear plant which results in rates set by the FERC. The power uprate proposal is most closely akin to a new contract for additional power and capacity. It is clear from CVPS documents that they see the power uprate proposal as a contract for new power and capacity. Both Mr. Young (Exhibit DPS-WKS-17) and Mr. Brown (Exhibit DPS-WKS-16) identify the lack of need for new capacity or energy as a reason for not supporting the decision. (I have explained earlier that this rationalization does not have merit.)

Q. In his rebuttal testimony, CVPS Witness Brown states that the opportunity to uprate Vermont Yankee has not been lost (Brown at 9-10), and that the value for a possible uprate can be addressed in the future (Brown at 10-11). Do you have a comment regarding these statements by Mr. Brown?

A. Yes. I believe Mr. Brown misses the point. The value, which I calculate to be $2,728,000, is lost for the adjusted test year which is the year of consideration for this case. I agree with Mr. Brown that it is possible in the future for CVPS to recover from its unreasonable management actions regarding power uprate.

Q. Please comment on Mr. Brown's rebuttal testimony statement, at 6, regarding the Sponsor's intention to review the power uprate decision in six months to a year.

A. Mr. Brown continues by saying, "As the Board and Department are aware, during 1999 Vermont Yankee was in negotiations to sell the Station, and entering the agreement to sell the Station to AmerGen effectively precluded a new uprate review in that six-month to one-year time frame." (Id.). Mr. Brown describes the beginning of exactly the scenario envisioned by Chairman Dworkin in his question to me in Docket No. 6300:

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THE CHAIRMAN: Let's assume we continue traditional rate regulation for the next 15 to 20 years. If we get to a point 12 years from now in which a rational buyer and independent owner like AmerGen would have pursued relicensing, and the Vermont owners actually still owned it and did not pursue relicensing just because they missed their chance from year to year to year, wouldn't that be an imprudent decision that would justify a disallowance?

THE WITNESS: I believe that that would be a possible finding.

Docket No. 6300, tr 6/14/00 at 122. In the question, Chairman Dworkin is speaking about relicensing, but the exact same scenario is beginning to be played out for power uprate. To the best of my knowledge, there is no current or ongoing effort to re-evaluate the power uprate decision.

Q. Please comment on Mr. Brown's interpretation of your discovery response NECNP/VPIRG 1-103 and related testimony in Docket No. 6300, as stated at 13-15 of his rebuttal testimony.

A. Mr. Brown does not interpret my response and testimony correctly. He concludes, at 15: "My interpretation of this testimony is that Mr. Sherman, and the DPS, clearly understood the restructuring requirements of many of the VY Sponsors to divest *and the reasonableness of the Sponsors' decision not to uprate in the late 1998/early 1999 time frame*." (emphasis added). With regard to the *reasonableness of the Sponsors' decision*, Mr. Brown imputes meaning to the discovery response which is not present. My response goes only to explaining a reason why the Sponsors chose not to pursue power uprate, and not to whether that reason was *a reasonable decision*.

Q. Mr. Brown states in rebuttal that the Department has concluded in Docket No. 6300 that its negotiation process with AmerGen with regard to power uprate was prudent (Brown at 15-16). Do you agree with his statement?

A. No. Again Mr. Brown imputes meaning which is not present in the quoted statement. He quotes DPS expert witness Monika Eldridge. However, Ms. Eldridge's conclusion applies to the overall negotiation, and not to specifics like power uprate. In discovery the Department sought documentation to corroborate CVPS's statements that AmerGen or Entergy would not provide value for power uprate (see three discovery responses in Exhibit DPS-WKS-22). Both Mr. Brown and VY Witness Wiggett confirm that no documentation exists to demonstrate that AmerGen or Entergy stated they would not provide value for power uprate. Therefore, it is

clear that Ms. Eldridge did not know that fact when she made her general conclusion regarding the negotiation process.

Q. What is your comment regarding Mr. Brown's rebuttal statements at 17 regarding your contact with Mr. Young before the VY Board Meeting of January 15, 1999?

A. Mr. Brown states that I did not forward the Department's views to Mr. Young, but I do not agree with Mr. Brown's comments. As I stated earlier in this testimony, I spoke with Mr. Young on the morning of January 15, 1999, before the VY Board Meeting at noon, to state the Department's support of the power uprate proposal. Mr. Young apparently does not remember the call.

Q. At the end of his rebuttal testimony (Brown at 18-19), CVPS Witness Brown expresses distress at the timing of this finding regarding the power uprate proposal that CVPS acted in a manner inconsistent with meeting the needs of its ratepayers at the lowest present-value life-cycle cost, and inconsistent with the management decisions a reasonable manager would have made. What is your comment regarding these statements?

A. Again, I do not agree. This docket is the first in which review of the power uprate decision is ripe for consideration. Mr. Brown questions why the issue was not pursued in the "recently completed Green Mountain Power rate case (Brown at 18)," which I take to mean Docket No. 6107. The adjusted test year for Docket No. 6107 was January 1999 to December 1999. Since the power uprate project was not scheduled to be complete until mid-2000, power

uprate consideration was not ripe for Docket No. 6107.[5] This present docket, with the adjusted test year of July 1, 2001 to June 30, 2002, is the first case the Department has seen in which the power uprate decision would have had an effect on cost of service.

Therefore, Mr. Brown's statement, "[t]he Department's . . . failure to assert either claim against GMP shows that there is simply no support for the Department's assertions against CVPS," is not accurate, and neither is his statement, "it would have been inappropriate for the DPS to request such a disallowance against GMP in their recent case; likewise, it is inappropriate to propose such a disallowance against CVPS." The difference in adjusted test years is the reason why one is appropriate and the other not.

Q. What is your overall opinion regarding the power uprate proposal?

A. The power uprate proposal should have been implemented. From a technical point of view, the uprate proposal was highly desirable because of the previous uprates on similar plants. There was little to no technical risk associated with the proposal. From an economic point of view, the uprate proposal was clearly beneficial. A fixed priced contract with General Electric Nuclear Energy provided protection against cost overruns. The cost of the added power would have been much lower than market costs of power. A reasonable utility manager in CVPS's position would not have chosen to oppose the power uprate proposal, and if CVPS had not opposed the proposal, it would have been implemented. Each of the reasons given by CVPS for its opposition either lack credibility or are inconsistent with the manner in which a reasonable utility manager would have managed, given the knowledge available at the time. In opposing the power uprate proposal, CVPS acted in a manner inconsistent with meeting the needs of its ratepayers at the lowest present-value life-cycle cost.

RESPONSE TO CVPS WITNESSES HOWLAND AND WATTS

[5] While it is true that Docket No. 6107 experienced delays, the adjusted test year was not changed from calendar year 1999.

Q. Please summarize the value of the power uprate proposal from your direct testimony.

A. In my direct testimony, I calculated the adjusted test year value of the power uprate proposal to be $3,277,000. This was based on a 5% power uprate at a cost of $10 million, with the power sold at a forward market price of $51.95 per MWH.

Q. What modifications do you make to the value of the power uprate proposal in this testimony?

A. Based on comments by CVPS Witnesses Howland and Watts, I modify the value of the power uprate proposal in the adjusted test year to be $2,728,000. Messrs. Howland and Watts state that CVPS's weighted overall MW share of Vermont Yankee is approximately 29.54%. I accept that value. They suggest using a winter rating, summer rating and forced outage rate to calculate MW output for Vermont Yankee. Instead, I use the MW output used by Vermont Yankee in Docket No. 6300, which is based on Vermont Yankee's historical performance. Using Vermont Yankee's historical output, I calculate that CVPS's share of the uprated power in the adjusted test year would have been 75,443 MWH, compared to Messrs. Howland and Watts value of 64,782 MWH. Rather than use monthly market values of energy suggested by Messrs. Howland and Watts, I use a price of $51.10 per MWH, revised from $51.95 per MWH in my direct testimony. This price represents the forward market price at which the block of power resulting from the power uprate could have been sold. This forward market price is described by DPS Witness Lamont. Finally, Messrs. Howland and Watts suggest the interest rate on borrowing for the power uprate project would have been CVPS's pre-tax cost of capital of 13.26%. However, if the power uprate had been pursued in 1999, Vermont Yankee would have used its Eurodollar funding instrument to capitalize the project. The interest rate on this account for 1999 was 5.53%.

Q. Is there a further consideration on how the adjusted test year value for the power uprate proposal is determined?

A. Yes. As stated earlier in this testimony, the power uprate proposal is most clearly understood as a new contract for a block of power of approximately 8 MW for CVPS. This

block of power is in addition to any needs already considered in this case. This 8 MW block would be blended with other Vermont Yankee power and would be provided through the FERC established formula rate. It would most likely be less costly than other CVPS and therefore would be retained for service needs, displacing 8 MW of more expensive power which would be available to sell on the forward market. However, the overall cascading mathematical effect would be the same as the addition of approximately 8 MW of one-cent-per-kWh power for sale on the forward market. Since this 8 MW is over-and-above the needs already considered in the case, it is proper to assume it could be sold as a block at forward market prices. Thus, the value of $2,728,000 is representative of the value of the power uprate proposal for the adjusted test year.

VERMONT YANKEE POWER COST ADJUSTMENTS

Q. Please state the basis upon which you describe Vermont Yankee projections.

A. The convention I use for considering Vermont Yankee costs is to speak about Vermont Yankee's total costs, rather than CVPS share of Vermont Yankee costs. After making adjustments on a "100% basis," I then apply the CVPS ownership percentage of 31.141% to arrive at CVPS's share.

Texas Compact Fee Amortization and Texas Compact Interest Expense

Q. Do you have comments on the adjustments for Texas Compact Fee Amortization and for Texas Compact Interest Expense described in your direct testimony?

A. Yes. In my direct testimony, I eliminated for the adjusted test year an amount of $2,456,000 for the Texas Compact Fee Amortization, and an amount of $852,500 for Texas Compact Interest Expense. On a table from VYNPC Witness Wiggett's pre-filed testimony identified as "Update to Table IV," Witness Wiggett agrees with the amount I had stated for the Texas Compact Fee Amortization, but states an amount of $646,000 for Texas Compact Interest Expense. I accept Witness Wiggett's amount of $646,000, and therefore modify the proposed adjustment accordingly.

Witness Wiggett, at Answer 11 on unnumbered pages of his testimony, agrees the Texas Compact expenses do not have a high probability of taking place in the adjusted test year:

> Notwithstanding the foregoing, Vermont Yankee does not object to removal of the Texas Compact expense from the Projection because of the actual timing of legally required payments with respect to the Texas Compact, which under current circumstances do not appear to be required until after the rate year.

Therefore, these expenses should be eliminated because they will not take place during the adjusted test year.

Q. Do you agree with Witness Wiggett's statement at Answer 11 on unnumbered pages of his testimony that "the Update must be considered in it's [sic] entirety as opposed to a set of individual line items?"

A. No. Vermont Yankee has chosen a basis upon which to develop and present its estimates of future costs. When it is known that an assumed project will not be performed, the estimate of future cost should be reduced by the amount of that project. In addition, Vermont Yankee's recent financial performance has been that its approved budgets have overestimated its future costs by multi-millions of dollars per year.

Vermont Yankee Decommissioning Expenses

Q. Do you have comments on the adjustments for Decommissioning Expenses described in your direct testimony?

A. Yes. In direct testimony, the adjustment I proposed was a reduction of $6,211,00, based on a collection amount of $10,879,000 per year instead of Vermont Yankee's proposed $17,090,000 per year. I had presented the $10,879,000 annual amount in testimony in Docket No. 6300. Vermont Yankee had committed to pursue the decommissioning collection rate through a new Federal Energy Regulatory Commission (FERC) case. I identified the possibility that a new Vermont Yankee decommissioning collection amount could be established in the

resolution of remaining issues in the open FERC docket with regard to the AmerGen transaction.

In the VY Update, VY Witness Wiggett states that the company no longer plans to file a rate case with the FERC. He then uses the 2000 step-up rate from FERC Docket ER94-1370-000, an amount of $16,777,380, for Vermont Yankee's decommissioning collection amount.

The Department does not agree with this amount. The settlement in FERC Docket ER94-1370-000 required that Vermont Yankee file a new decommissioning case in 1999 with an effective date of January 2000. This case was put off by agreement in April 1999 only to allow Vermont Yankee to pursue the AmerGen transaction. However, now that the AmerGen transaction has been rejected, the Department expects Vermont Yankee to bring this decommissioning case with an effective date of January 1, 2000. In this FERC case, the Department expects the annual amount to be set at approximately $10,879,000 or lower, primarily due to the higher-than-estimated investment return for the intervening six years. This amount is supported in my direct testimony.

Q. You mentioned the possibility that a new Vermont Yankee decommissioning collection amount could be established in the resolution of remaining issues in the open FERC docket with regard to the AmerGen transaction.

A. Yes. The FERC has a process in which an administrative law judge is appointed to oversee formal settlement discussions. This settlement process is currently in effect for the resolution of issues deriving from the rejected AmerGen transaction. The decommissioning collection rate is a consideration in this settlement process. I have been one of the Department's representatives in this process.

Q. Has there been a settlement of these issues?

A. No, not yet, but it is possible there will be a settlement in the same time frame as this CVPS proceeding.

Q. Do you have a proposal related to the possible FERC settlement and the decommissioning collections used for the cost of service in this proceeding?

A. Yes. Either a settlement will be reached or the Department will act in a manner to bring a FERC decommissioning case which will establish the collection rate for the adjusted test year. If the collection amount is not determined before the Board's Decision in this case, I propose an account mechanism be established to accommodate the collection rate which is eventually established.

Q. Do you have a modification to the adjustment from your direct testimony?

A. Yes. Because settlements involve compromises from all parties on a number of issues, I consider an amount of $11,400,000 to be a reasonable amount to use as a basis for a collection rate in this proceeding. Therefore, in this surrebuttal testimony, I reduce Vermont Yankee's original annual amount of $17,090,000 to $11,400,000, resulting in a reduction of $5,690,000 for the adjusted test year.

Future Sale Transaction Expenses

Q. Please describe your adjustments for Future Sale Transaction Expenses.

A. The adjustment for Future Sale Transaction Expenses continues to be the same as presented in my direct testimony, for the reasons stated therein. The manner for charging Future Sale Transaction Expenses is also a subject under discussion in the FERC settlement process described earlier. My expectation is that the FERC settlement process will result in the outcome described in my direct testimony. However, if the FERC settlement process does not result in this outcome, the Department intends to pursue this outcome through litigation at the FERC. Therefore, the adjusted test year expense should be reduced by $1,500,000 to remove the Future Sale Transaction Expenses.

MILLSTONE 3 DECOMMISSIONING EXPENSES

Q. Please describe your adjustment for Millstone 3 Decommissioning Expenses.

A. In its rate case filing CVPS included an amount of $354,756 for the adjusted test year for CVPS share Millstone 3 decommissioning expenses. DPS Witnesses Schultz and DeRonne identified an adjustment of $54,252 at page 9 of their direct testimony. However, in discovery which followed from this adjustment, it was revealed that the entire $354,756 should be eliminated.

Q. Please describe the relevant discovery to Millstone 3 decommissioning expenses.

A. In deposition, we asked CVPS Witnesses Howland and Watts about the basis for the Millstone 3 estimate. They indicated CVPS Witness Holtman could provide the answer. Deposition of Howland/Watts 4/4/01 at 87-89. Then in deposition, we asked CVPS Witness Holtman about the Millstone 3 basis, and he referred back to CVPS Witnesses Howland and Watts. Deposition of Holtman 4/10/01 at 26. Witness Holtman referred to just getting bills from Millstone 3, which include decommissioning, and paying them like they always have. Deposition of Holtman 4/10/01 at 22-24.

It was apparent CVPS experts did not understand CVPS's basis for Millstone 3 decommissioning expenses. We then asked for the basis for the Millstone 3 decommissioning expense in DPS discovery request 15-33. In response CVPS provided information which showed its proposed rate was based on charges established by Connecticut Department of Public Utility Control (DPUC) case, Docket No. 98-01-02, decided on February 5, 1999. This decommissioning information for Millstone 3 was applicable prior to the sale of the unit and does not reflect changes that result from Dominion Resources majority ownership and management of the unit. Dominion Resources (through its subsidiary, Dominion Nuclear Connecticut) has recently completed the purchase of the majority of the three Millstone units, and will be the majority owner and manager of Millstone 3 for the adjusted test year. Because the change in ownership is recent, it appears that changed decommissioning plans and expenses as a result of the Dominion Resources purchase have not filtered down through administrative levels to CVPS.

Q. Please describe the changes to decommissioning plans and expenses as a result of Dominion Resources majority ownership and management of Millstone 3.

A. These changes are reflected in Connecticut DPUC's Docket No. 99-09-12RE01 Decision ("DPUC Sale Decision") on the Millstone sale, dated January 25, 2001 (Exhibit DPS-WKS-23), and the Nuclear Regulatory Commission's (NRC's) Safety Evaluation ("NRC Safety Evaluation") for the license transfer of the Millstone plants to Dominion Resources in conjunction with the sale, dated March 9, 2001 (Exhibit DPS-WKS-24).

The NRC Safety Evaluation, at pages 7 to 10, identifies that Dominion Resources has selected the prepayment method to demonstrate financial assurance for decommissioning Millstone 3. This means the decommissioning fund is fully funded, and needs only investment returns (and not annual contributions) over the remaining years before decommissioning in order to accumulate the amount necessary to accomplish the work of decommissioning. Dominion Resources represents that the decommissioning fund related to Millstone 3 which it receives by transfer in the sale is prepaid and fully funded. The NRC in the Safety Evaluation accepts that the Millstone 3 fund is prepaid and fully funded.

Under Connecticut law, the DPUC determines decommissioning collections for Millstone 3. In the DPUC Sale Decision, Docket No. 99-01-12RE01, DPUC determined that the Millstone 3 decommissioning fund is fully funded.

In Docket No. 99-01-12RE01, Dominion requested approval of its decommissioning financing plan for Millstone 3 (DPUC Sale Decision, at 2), and was granted approval of the plan (DPUC Sale Decision, at 15, 22). The Dominion plan changed the decommissioning start date for Millstone 3. In the 1999 plan, decommissioning was assumed to begin in 2025, but in the Dominion plan it is assumed to begin in 2050, which is approximately the earliest time Unit 3 can be decommissioned if it were granted a 20-year license extension by the NRC (DPUC Sale Decision, at 14). Delaying decommissioning is within NRC requirements (DPS Sale Decision, id.), and is a choice which a nuclear utility may make irrespective of whether a 20-year license renewal is granted. DPUC concluded that the estimated time of closing Millstone Station and the estimate cost of decommissioning were reasonable (DPUC Sale Decision, id.). Using this

decommissioning timing, Dominion showed that the value of Millstone 3's prepaid decommissioning fund exceeded the amount the amount estimated to be required for decommissioning (DPUC Sale Decision, at 16). The DPUC Sale Decision also describes that a top-off is required for Millstone 1, since it's fund amount did not exceed amounts estimated to be required, but that no top-off was required for Millstone 2 and 3 (id.).

DPUC may have the authority and may choose to revisit decommissioning collections in the future. However, it's latest decision of record is Docket No. 99-01-12RE01, and this decision applies to the adjusted test year. Therefore, if the decommissioning fund is fully funded for Dominion Resources, it is similarly fully funded for CVPS. For this reason, I reduce CVPS estimate for Millstone 3 decommissioning by the entire amount of $354,756.

Q. Does this conclude your surrebuttal testimony?

A. Yes, it does.